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CORPORATION

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

NEELAM SANDHU, an individual,

Plaintiff,

vs.

**BLACKBERRY CORPORATION, a
Delaware Corporation,**

Defendant.

Case No. 3:24-cv-02002-SK

**DEFENDANT BLACKBERRY
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT**

Redacted Version

Hearing Date: January 26, 2026
Time: 9:30 AM
Place: Courtroom C
Judge: Hon. Sallie Kim

NOTICE OF MOTION & MOTION

PLEASE TAKE NOTICE that on January 26, 2026, at 9:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Sallie Kim in Courtroom C of the United States District Court for the Northern District of California, Defendant BlackBerry Corporation (“BlackBerry”) will and hereby does seek a ruling under Federal Rule of Civil Procedure 56 entering summary judgment in BlackBerry’s favor on each of Plaintiff’s claims.

BlackBerry moves for summary judgment on Plaintiff's retaliation, discrimination, negligent retention, wrongful termination, and failure to prevent claims, as well as Plaintiff's request for punitive damages, as set forth in Plaintiff's First Amended Complaint.

This motion is based on this Notice of Motion, the Memorandum of Points and Authorities, the concurrently filed Declaration of Lauren Beck and exhibits thereto, the concurrently filed Declaration of Fraser Deziel and exhibits thereto, the concurrently filed Declaration of Jennifer Bramhill, all papers on file in this action, and any argument, evidence, or authority presented in reply or at the hearing.

DATED: December 10, 2025

MUNGER, TOLLES & OLSON LLP

By: /s/ Katherine M. Forster
KATHERINE M. FORSTER

Attorneys for Defendant BLACKBERRY
CORPORATION

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In the early 2010s, BlackBerry was a market leader in the growing smartphone industry. But as Apple and other competitors overtook that business, BlackBerry shrunk from ~17,500 to ~3,500 employees between 2011 and 2021. By the 2020s, BlackBerry no longer made smartphones and instead principally consisted of a Cyber group, which sold cybersecurity software products, and an Internet of Things (IoT) group, which focused on automotive software. BlackBerry also had a large corporate team supporting the two business units. That corporate team reported into John Chen, who had served as CEO since 2013 and had overseen the transition of BlackBerry's business.

Between 2011 and 2021, BlackBerry was not profitable, posting net losses in more years than it posted net gains, and in May of 2023, BlackBerry's Board announced that it would conduct a review of strategic alternatives to enhance shareholder value. Then, in late October 2023, BlackBerry announced that John Chen would retire. BlackBerry was poised to elevate John Giamatteo, President of the Cyber division, to replace Mr. Chen as CEO. Days before the public announcement of Mr. Chen's departure, however, BlackBerry received an anonymous complaint accusing Mr. Giamatteo of sexual harassment. BlackBerry promptly hired outside counsel to investigate and appointed Richard Lynch, a longstanding member of its Board and the former Chief Technology Officer of Verizon, as interim CEO.

Not knowing whether he would be CEO for a few days or many months, Mr. Lynch began executing on a restructuring plan that he believed was important for the company's survival. His plan aimed to separate BlackBerry's two business units and eliminate the company's "big-company corporate bureaucracy." On a call with BlackBerry's executive team on November 6, Mr. Lynch explained that restructuring was coming and could impact executives' roles. By November 13, he had identified three executives whose roles would be eliminated at the outset of the restructuring:

[REDACTED]; and Plaintiff Neelam Sandhu, who held two roles—Chief Elite Customer Success Officer and CMO—and led some sustainability functions.

1 In the case of Ms. Sandhu, her role as Chief Elite Customer Success Officer overlapped with
2 the work of the Cyber business unit, where Mr. Lynch determined all sales functions for
3 BlackBerry's cybersecurity products should reside. With respect to Ms. Sandhu's CMO role, Mr.
4 Lynch determined that the two separate business units—not a corporate umbrella layer—should
5 handle their respective marketing needs. And Mr. Lynch believed that BlackBerry's legal
6 department could manage Plaintiff's sustainability work. On December 4, 2023, Mr. Lynch
7 notified Plaintiff that her role was being eliminated due to restructuring.

8 In the ensuing months, BlackBerry continued its downsizing and reorganization, cutting
9 hundreds of additional jobs. Ms. Sandhu's Elite Customer Success Team—which formerly had
10 eight employees—was disbanded and permanently eliminated, and BlackBerry has not had a
11 corporate Chief Marketing Officer, nor an executive outside of its legal department responsible for
12 sustainability functions, since Plaintiff's departure two years ago.

13 Mr. Lynch's decision to terminate Ms. Sandhu was not retaliatory, discriminatory, or
14 unlawful in any way, and Plaintiff has failed to adduce evidence sufficient to raise a material
15 dispute of fact that it was. Nor has she adduced facts that the litany of other workplace grievances
16 she alleges, such as being left off meeting invites or having responsibilities for certain customers
17 reshuffled, constituted unlawful conduct. To avoid summary judgment for BlackBerry on her
18 claims under California's Fair Housing & Employment Act (FEHA), Ms. Sandhu must show—by
19 “specific and substantial” evidence—that relevant decisionmakers acted with retaliatory or
20 discriminatory intent. She cannot do so on any of her scattershot discrimination or retaliation
21 theories, even taking all disputed facts in Plaintiff's favor. Since Plaintiff's discrimination and
22 retaliation claims fail, so do her derivative claims for failure to prevent and wrongful termination.
23 Summary judgment is also appropriate on Ms. Sandhu's claim for negligent retention and her
24 request for punitive damages because she has failed develop evidence to support them. For the
25 reasons stated below, BlackBerry is entitled to summary judgment.

26 **II. FACTS**

27 By the time events related to this lawsuit began in 2021, BlackBerry was no longer
28 profitable. *See* Ex. Declaration of F. Deziel (“Deziel Decl.”) ¶ 6. The prior ten years had been a

1 period of significant change for the company. It had contracted from approximately 17,500 to
2 3,500 employees. Declaration of J. Bramhill (“Bramhill Decl.”) ¶¶ 4, 5. And BlackBerry, which
3 had commanded a significant share of the smartphone market in 2011, no longer made smartphones
4 at all. *Id.* at ¶ 3.

5 By 2021, BlackBerry principally consisted of two internal business units: the Cyber group,
6 which developed and sold cybersecurity software products, and IoT, which focused largely on
7 automotive software. *Id.* ¶ 6. The Cyber business was led by John Giamatteo, who joined
8 BlackBerry in October 2021 as President of the Cyber division and as a potential successor to then-
9 CEO John Chen. Ex. 1 to Declaration of L. Beck (Chen Dep.) at 19:18-20:4.¹ The two business
10 units were supported by a large corporate team that reported to Mr. Chen.

11 At the time, Ms. Sandhu served as Mr. Chen’s chief of staff and ran BlackBerry’s Elite
12 Customer Success Team (“Elite”), a role Mr. Chen created for her in early 2020. *Id.*; Ex. 1 (Chen
13 Dep.) at 21:17-25:18. Elite’s goal was to deliver specialized, high-touch service to BlackBerry’s
14 most important customers of cybersecurity products. *Id.* at 21:17-25:18. While the Cyber team
15 was responsible for the development of BlackBerry’s cybersecurity products and the majority of
16 the customers for them, the Elite team was designed to ensure extra care for top accounts. *Id.*
17 Despite overlapping responsibilities, the teams’ reporting lines were separate: Plaintiff, at the helm
18 of Elite, and Mr. Giamatteo, as President of Cyber, each reported directly to the CEO. *Id.*

19 Friction emerged between the teams before Mr. Giamatteo joined BlackBerry. By early
20 2021—one year into Elite’s existence and months before Mr. Giamatteo arrived—BlackBerry’s
21 longtime outside counsel reported to the company that “[t]he atmosphere that hangs over the two
22 teams is nothing short of toxic.” Ex. 2 (DOE000186) at 2. Ms. Sandhu admits tensions existed
23 and predated Mr. Giamatteo. *See* Ex. 3 (Sandhu Dep.) at 95:16-24 (blaming two individuals, but
24 acknowledging that some issues predated Mr. Giamatteo’s hiring); *see also* Ex. 1 (Chen Dep.) at
25 158:4-159:2; 160:3-9. As Ms. Sandhu explained at her deposition, the tension was partly structural:
26 “[T]he sales team, as salespeople always do, want the best accounts or want the accounts that are

27
28 ¹ Unless otherwise stated, all exhibits cited are exhibits to the Declaration of Lauren Beck.

1 doing well. Salespeople always fight about territories and things like that.” Ex. 3 (Sandhu Dep.)
2 at 98:1-18 (describing tension in October 2021); *see also* Ex. 1 (Chen Dep.) at 25:4-11 (“A
3 salesperson would always want the account control and their commissions and their performance
4 depended on that”); *id.* at 23:23-24:18, 172:2-12.

5 On October 20, 2021, two weeks after Mr. Giamatteo joined the company, he and Plaintiff
6 had dinner at a restaurant close to BlackBerry’s San Ramon office. Plaintiff alleges that Mr.
7 Giamatteo approached the dinner like a date, and that she interpreted his actions during the dinner
8 as a sexual advance. *See* FAC ¶ 39-40; Ex. 3 (Sandhu Dep.) at 124:13-128:20, 145:10-24. Plaintiff
9 further claims that she reported to Mr. Chen within 24 to 48 hours of the dinner that Mr. Giamatteo
10 got “too close” in a way that made her “highly uncomfortable,” and that Mr. Giamatteo suggested
11 they travel together—a comment Ms. Sandhu perceived as sexual. Ex. 3 (Sandhu Dep.) at 114:21-
12 116:16; 132:4-134:1. Ms. Sandhu never reported to BlackBerry HR any conduct by Mr. Giamatteo
13 that she perceived as a sexual advance. Ex. 3 (Sandhu Dep.) at 225:20-227:1.

14 Ms. Sandhu did, however, go on to submit two complaints to HR about Mr. Giamatteo in
15 2022 and 2023. The first, submitted in July 2022, concerned an organizational chart the Cyber
16 sales team sent to a client that incorrectly showed Plaintiff as reporting to Mr. Giamatteo. Ex. 4
17 (BB13-00002445); *see also* Ex. 5 (BB13-00002384). HR investigated and found the org chart was
18 incorrect, but “did not conclude that incorrect information was intentionally circulated or that
19 leadership provided direction to any individual to produce incorrect information.” Ex. 6 (BB13-
20 00004042). No evidence suggests that Mr. Giamatteo was aware of the chart before Plaintiff
21 brought it to his attention after it was circulated. *See* Ex. 7 (BB13-00002456).

22 Ms. Sandhu’s second complaint, submitted in February 2023, stated that Mr. Giamatteo
23 “would like my role to be diminished or for me to be exited from the company.” Ex. 8 (BB13-
24 00004373). She cited (1) the July 2022 org chart incident; (2) three incidents she summarized as
25 showing that “[Mr. Giamatteo’s] team, on an ongoing basis, does not appropriately acknowledge
26 my role”; and (3) two instances of Mr. Giamatteo allegedly telling his team, without basis, “that
27 [Ms. Sandhu’s] role will be changing on March 1.” *Id.*; *see also* Ex. 9 at 2 (Second Amended
28 Interrogatory Resps.) (citing this complaint as outlining her retaliation allegations). Ms. Sandhu’s

1 February 2023 complaint never alluded to discrimination, retaliation, sexual harassment, or any
2 gendered conduct. *See* Ex. 8 (BB13-00004373).

3 Outside counsel for BlackBerry investigated, and on March 10, 2023, issued a report
4 concluding that “there is no concerted intentional effort to diminish Neelam’s roles within the Elite
5 Group or to force her out of the company.” Ex. 10 (BB13-00019395) (emphasis in original).
6 Counsel observed that, “[w]hile there are significant issues that are impeding the working
7 relationship between the Elite Group and the [Cyber] sales people, these are issues that have been
8 ongoing for some period of time and are not unique to John Giamatteo or his sales people.” *Id.*
9 Counsel credited Ms. Sandhu’s “energy, talents, and [] record of success,” *id.* at 2, but noted she
10 had a “dictatorial image” and made peers feel “like second class citizens,” leaving them
11 “disengaged and angry.” *Id.* The report found that, while “Neelam’s complaint that the salespeople
12 are trying to diminish her job is not accurate with regard to actual ‘intent,’ . . . there is certainly
13 evidence that they do try to avoid interacting with her to every extent they possibly can.” *Id.*

14 Two days later, counsel emailed Ms. Sandhu, asking to discuss a plan “to improve relations
15 between Elite and sales.” Ex. 11 (BB13-00011766). A plan emerged: Mr. Chen would reallocate
16 accounts to give each group “exclusive jurisdiction over their respective clients.” Ex. 40 (BB13-
17 00012142). At the same time, Ms. Sandhu would be promoted to CMO. Ex. 1 (Chen Dep.) at
18 173:16-174:4; Ex. 3 (Sandhu Dep.) at 250:25-251:10 (CMO offer “came on the table” at the same
19 time as account transfers). On April 19, Mr. Chen re-allocated accounts between Elite and Cyber,
20 reducing the total number of Elite accounts. *See* Ex. 1 (Chen Dep.) at 111:6-9; Ex. 41 (BB13-
21 00006406). Ms. Sandhu became CMO shortly thereafter. *See* Ex. 14 (DOE000098); Ex. 12 (BB13-
22 00012834); Ex. 13 (BB13-00012829).

23 In the background, the company continued to struggle with profitability. In fiscal year 2021,
24 BlackBerry reported a net loss of \$1.1 billion. *See* Deziel Decl. ¶ 6. And although it posted a small
25 net income (\$12 million) in fiscal year 2022, it again reported a significant net loss (\$734 million)
26 in fiscal year 2023. *See id.*

27 In May of 2023, shortly before Ms. Sandhu became CMO, BlackBerry’s Board announced
28 that it would conduct a review of strategic alternatives to enhance shareholder value, as part of

1 what became known as “Project Imperium.” *See* Ex. 16 (BB13-00022511). On October 4, the
2 Board announced that the review was complete and that BlackBerry would separate the IoT and
3 Cyber business units, with a plan to pursue a subsidiary initial public offering for the IoT business.
4 Ex. 17 (BB13-00022508); Ex. 1 (Chen Dep.) at 57:4-20; *see also* Ex. A to Deziel Decl. at 59.

5 On October 30, Mr. Chen announced that he was retiring after 10 years as CEO. FAC ¶ 58;
6 Ex. 18 (BB13-00022503). Four days before Mr. Chen’s resignation became public, an anonymous
7 complaint accused the Board’s intended CEO-successor, Mr. Giamatteo, of sexual harassment. Ex.
8 19 (BB13-00016005); *see also* Ex. 20 (Lynch Dep.) at 48:7-15. The complaint stated that it was
9 from “several women” “who [had] directly or indirectly worked under the leadership of John J.
10 Giamatteo.” Ex. 19 (BB13-0016006). A follow-up message stated that the complainant was “a
11 collective of about 10 women.” Ex. 21 (BB13-00016979). BlackBerry hired Morrison Foerster
12 LLP to investigate. FAC ¶ 61. Richard Lynch, a long-time member of BlackBerry’s Board and
13 former Chief Technology Officer at Verizon, stepped in as interim CEO. Ex. 39 (BB13-00022505).

14 Mr. Lynch immediately set about implementing the company’s restructuring plan, which he
15 viewed as important to the survival of the business. Ex. 20 (Lynch Dep.) at 71:23-72:20.
16 Responding to unfavorable investor feedback on Project Imperium, Mr. Lynch developed a new
17 plan, which he called “Project Mustard.” Ex. 22 (BB13-00017578); Ex. 20 (Lynch Dep.) at 228:19-
18 229:6. Under the Project Mustard plan, BlackBerry would no longer seek a sub-IPO of its IoT
19 business, but would separate Cyber and IoT into virtually autonomous divisions and eliminate all
20 but a thin “umbrella” layer of corporate functions outside of them, to streamline operations and cut
21 costs. Ex. 20 (Lynch Dep.) at 212:23-214:4, 71:24-79:4, 156:12-15.

22 On November 6, Mr. Lynch held a meeting with BlackBerry’s executives to preview changes
23 Project Mustard would require. Ex. 20 (Lynch Dep.) at 132:14-137:20; Ex. 22 (BB13-00017578).
24 At the meeting, which Ms. Sandhu attended, Mr. Lynch said that BlackBerry “can’t afford big-
25 company bureaucracy” and “[c]ertain functions have to be rethought.” Ex. 22 (BB13-00017578)
26 at 2. He said that the restructuring could impact executives’ roles. FAC ¶ 79.

27 The same day, Ms. Sandhu met with investigators from Morrison & Foerster. *See* Ex. 24
28 (BB13-00017752); Ex. 3 (Sandhu Dep.) at 320:21-321:5, 323:20-324:4, 325:14-19. Ms. Sandhu

1 was one of 21 witnesses interviewed. Ex. 27 (BB13-00018651) at 1. She told investigators that
2 Mr. Giamatteo had freshened up before the dinner in October 2021 and that, at a separate meeting,
3 he had joked that he looked like a “dirty old man” when out with his adult daughters and suggested
4 Ms. Sandhu report to him so they could travel together. Ex. 25 (MoFo-00000073) at 2. Although
5 Ms. Sandhu indicated that she considered this conduct a sexual advance, the investigators
6 concluded that the conduct would not constitute sexual harassment or violate BlackBerry policy,
7 even if it occurred as Ms. Sandhu described. Ex. 27 (BB13-00018651).

8 On November 7, the day after her interview, Ms. Sandhu wrote to one of the investigators,
9 attaching “some documents that demonstrate [Mr. Giamatteo’s] harassment of me, which
10 commenced after I did not respond positively to his suggestive comments.” Ex. 29 (BB13-
11 00017812). Ms. Sandhu’s email stated that Mr. Giamatteo excluded her from meetings, attaching
12 emails from 2021 as background. *Id.* She stated he had taken credit for her work in a presentation
13 and refused to meet with her about an idea she had for the business. *Id.* At the time of Ms. Sandhu’s
14 November 7 email, Mr. Lynch was not aware of her conversation with investigators or any follow-
15 up emails. Ex. 20 (Lynch Dep.) at 260:18-22 (testifying that he was unaware of Ms. Sandhu’s
16 complaints when he reached the decision that week to terminate her). Ms. Sandhu also never told
17 Mr. Lynch about any alleged advance by Mr. Giamatteo. Ex. 3 (Sandhu Dep.) at 320:2-20.

18 The first phase of Project Mustard focused on cuts at the executive level, with the expectation
19 that further separations would follow at lower levels of the business. Ex. 20 (Lynch Dep.) at 79:2-
20 17, 71:24-72:20; 181:20-182:25. To identify the roles BlackBerry would eliminate, Mr. Lynch
21 analyzed the company’s org chart and conducted one-on-one meetings with BlackBerry’s
22 executives over the next week to understand their roles and their views of the challenges facing the
23 company. Ex. 20 (Lynch Dep.) at 79:2-17; 70:24-73:16. Mr. Lynch identified for termination
24 three executives whose roles resided exclusively within BlackBerry’s corporate umbrella layer:
25 Ms. Sandhu, head of the Elite team, corporate CMO, and head of certain sustainability functions;
26 [REDACTED]
27 [REDACTED]. Ex. 20 (Lynch Dep.) at 70:24-80:22; 181:20-184:6; 202:12-203:21; 259:13-
28 260:22. Mr. Lynch decided on all three separations by November 13, 2023. Ex. 20 (Lynch Dep.)

1 at 260:2-12 (“I had concluded what I needed to do by November 13th.”). He acted alone—without
2 input from Mr. Giamatteo or anyone else—in selecting executives for termination. Ex. 20 (Lynch
3 Dep.) at 211:1-212:5; *see also id.* at 92:5-93:2; Ex. 30 (Giamatteo Dep.) at 95:3-6; 108:3-18;
4 111:16-19; 256:3-25 (Mr. Lynch did not discuss Ms. Sandhu’s termination with Mr. Giamatteo
5 until after the decision was made).

6 After deciding that Ms. Sandhu’s roles would be eliminated, Mr. Lynch did not attempt to
7 find her a new role within the company for two reasons. Ex. 20 (Lynch Dep.) at 79:2-17. *First*, he
8 understood from Ms. Sandhu’s colleagues—including Marjorie Dickman, a fellow C-Suite
9 executive—that Ms. Sandhu was unusually difficult to work with, *id.* at 79:18-80:4, and he
10 concluded that her performance was unlikely to outweigh those difficulties, *see id.* at 84:8-89:5.
11 *Second*, Mr. Lynch believed that reducing executive headcount was essential to BlackBerry
12 successfully and sustainably cutting its costs. *Id.* at 79:2-17.

13 On November 16, Ms. Sandhu emailed the investigator again, “sharing another example of
14 John Giamatteo’s retaliation against me as it continues today with him still cutting me out of my
15 job.” Ex. 28 (BB13-00018146) at 1. Her email stated that Mr. Giamatteo had arranged a press
16 release for a deal his team had executed, without coordinating with Ms. Sandhu as CMO. *Id.* Later
17 that day, Ms. Sandhu forwarded the note to Mr. Lynch. Ex. 32 (BB13-00018204).

18 On November 27, Morrison & Foerster sent its final investigation report to BlackBerry. It
19 described complaints from Ms. Sandhu and one other female (former) employee, identified to the
20 business only as Female Executive 1 and Female Executive 2. *See Ex. 27 (BB13-00018651); Ex.*
21 *Ex. 20 (Lynch Dep.) 179:3-182:6.* The report concluded that there was no evidence of harassment or
22 any pattern of gendered behavior by Mr. Giamatteo, including based on what Ms. Sandhu reported.
23 *Ex. 27 (BB13-00018651) at 2.* After receiving the final report, BlackBerry moved forward with
24 negotiating Mr. Giamatteo’s CEO contract. *See Ex. 20 (Lynch Dep.) at 104:7-105:9; 199:2-14.*

25 In the background, Mr. Lynch continued working on the separations he had identified during
26 the week of November 13. On November 29, he received information from BlackBerry HR
27 regarding severance terms for all three executives. Ex. 33 (BB13-00018714) at 15. Mr. Lynch
28 planned to allow each executive the opportunity to resign. Ex. 20 (Lynch Dep.) at 202:24-203:21.

1 Following conversations with Mr. Lynch, [REDACTED] opted to resign and accept
2 severance. Ex. 20 (Lynch Dep.) at 202:24-203:21; *id.* at 63:2-23, 69:2-11; Ex. 34 (BB13-
3 00004693); Ex. 31 (Kurtz Dep.) at 66:1-18. On December 4, Mr. Lynch notified Plaintiff that her
4 role was being eliminated due to restructuring. *See* Ex. 20 (Lynch Dep.) at 194:23-197:9; FAC ¶
5 79; Ex. 35 (BB13-00018742). He gave Plaintiff the option to style her departure as a resignation,
6 but Plaintiff declined to respond and did not accept or attempt to negotiate a severance package.
7 FAC ¶ 84; Ex. 36 (BB13-00004714); Ex. 3 (Sandhu Dep.) at 266:17-21.

8 On December 11, 2023, BlackBerry publicly announced the Project Mustard restructuring
9 and its appointment of Mr. Giamatteo as CEO. Ex. 39 (BB13-00022505). By February 2024, the
10 company reported a headcount reduction since the prior year of approximately 20% and an
11 expected savings of over \$100 million. Ex. A to Deziel Decl. at 58, 59; Ex. 43 (BB13-00022362).
12 All told, Project Mustard resulted in over 500 eliminated roles. *See* Ex. 30 (Giamatteo Dep.) at
13 254:4-14; 260:21-261:9. As part of the restructuring, the Elite and Corporate Marketing teams
14 were permanently disbanded, and the teams' 44 combined employees (in addition to Ms. Sandhu)
15 were reassigned or terminated. Bramhill Decl. ¶ 10-11. As of the date of this filing—two years
16 after Ms. Sandhu's termination—none of her former roles exist within the organization. *Id.* ¶ 9.

17 III. **LEGAL STANDARD**

18 A motion for summary judgment should be granted if “there is no genuine dispute as to any
19 material fact and the movant is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a).
20 Summary judgment must be granted where a party “fails to make a showing sufficient to establish
21 the existence of an element essential to that party’s case, on which that party will bear the burden of
22 proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

23 Retaliation and discrimination claims under the California Fair Employment and Housing
24 Act (FEHA) are analyzed under the burden-shifting framework set forth in *McDonnell Douglas*
25 *Corp. v. Green*, 411 U.S. 792 (1973). *See Morgan v. Regents of Univ. of Calif.*, 88 Cal. App. 4th
26 52, 68 (2000); *Day v. Sears Holdings Corp.*, 930 F. Supp. 2d 1146, 1160 (C.D. Cal. 2013) (“In
27 evaluating discrimination claims under FEHA, California courts look to federal precedent governing
28 analogous federal discrimination laws.”) (citing *Guz v. Bechtel Nat. Inc.*, 8 P.3d 1089 (Cal. 2000)).

1 To survive summary judgment on retaliation claims, a plaintiff must first prove a *prima facie*
2 case of retaliation by showing “(1) [she] engaged in a ‘protected activity,’ (2) the employer subjected
3 [her] to an adverse employment action, and (3) a causal link existed between the protected activity
4 and the employer’s action.” *Yanowitz v. L’Oreal USA, Inc.*, 116 P.3d 1123, 1130 (Cal. 2005);
5 *Rodriguez v. Comcast Inc.*, 2020 WL 4368213, at *6 (N.D. Cal. July 30, 2020) (Kim, J.).

6 The burden then shifts to the employer to produce a “legitimate, nonretaliatory reason for
7 the adverse employment action.” *Yanowitz*, 116 P.3d at 1130. Once the employer offers a
8 nonretaliatory reason, “the presumption of retaliation ‘drops out of the picture,’ and the burden shifts
9 back to the employee to prove intentional retaliation.” *Id.* If a plaintiff relies on circumstantial
10 evidence at the third stage, he or she must show “specific and substantial” evidence of retaliatory
11 intent. *Morgan*, 88 Cal. App. 4th at 54.

12 The same three-part framework applies to discrimination claims. See *Guz*, 8 P.3d at 1132-
13 33. At the *prima facie* stage, a plaintiff must show that: (1) she belongs to a protected class; (2) she
14 was performing competently in her position; (3) she suffered an adverse employment action; and
15 (4) a “causal nexus” existed between the adverse employment action and her sex. *Wawrzenski v.*
16 *United Airlines Inc.*, 106 Cal. App. 5th 663, 685 (2024). If a plaintiff does so, the burden shifts to
17 the employer to articulate “legitimate, nondiscriminatory reason[s] for the adverse employment
18 action.” *Id.* at 684. At the final step, the burden shifts back to the plaintiff, who must raise a “triable
19 issue suggesting that the employer’s proffered reason is mere pretext for unlawful discrimination,
20 or offer other evidence of discriminatory motive.” *Merrick v. Hilton Worldwide, Inc.*, 867 F.3d
21 1139, 1146 (9th Cir. 2017). Ultimately, Plaintiff must prove that discriminatory animus was a
22 “substantial motivating factor” behind the employer’s actions. *Wawrenski*, 106 Cal. App. 5th at
23 658. If the plaintiff relies on circumstantial evidence, that evidence must again “be ‘specific’ and
24 ‘substantial’ in order to create a triable issue.” *Morgan*, 88 Cal. App. 4th at 69 (citation omitted).

25 **IV. ARGUMENT**

26 **A. Plaintiff’s Retaliation Claims Fail as a Matter of Law.**

27 **1. Plaintiff Cannot Establish a *Prima Facie* Case of Retaliation.**

28 Plaintiff has offered four theories of retaliation, involving multiple coworkers, based on

1 (1) Mr. Lynch’s decision to terminate her in December 2023; (2) Mr. Chen’s decision to reassign
2 certain of her customer accounts in April 2023; (3) Mr. Giamatteo’s day-to-day treatment of her,
3 such as allegedly excluding her from meetings, from late 2021 to 2023; and (4) day-to-day treatment
4 by an unspecified “boys club.” Plaintiff cannot meet her *prima facie* burden on any theory.²

5 (a) **Termination**

6 Plaintiff cannot establish a *prima facie* case of retaliation based on her termination because
7 the evidence establishes that Richard Lynch was unaware Plaintiff had engaged in any protected
8 activity at the time he decided to terminate her, and Plaintiff cannot put forth evidence to the
9 contrary. *Garcia-Brower v. Premier Auto. Imports of CA, LLC*, 55 Cal. App. 5th 961, 978 (2020)
10 (“Essential to a causal link is evidence that the employer was aware that the plaintiff had engaged
11 in the protected activity.”); *Reed v. Avis Budget Grp., Inc.*, 472 F. App’x 525, 526 (9th Cir. 2012).

12 By November 13, 2023, Mr. Lynch had made the decision to terminate Plaintiff. Ex. 20
13 (Lynch Dep.) at 259:10-260:22. And as he explained in his deposition, Mr. Lynch was not aware
14 at that time of any conduct that Ms. Sandhu alleges constituted protected activity. Ex. 20 (Lynch
15 Dep.) at 260:18-22 (“Q. . . . Did you know at the time you decided to terminate Ms. Sandhu whether
16 she had ever complained about colleagues in the past? A. I did not know.”); *see also* Ex. 9 (Second
17 Amended Responses to Interrogatories, Set 1) (Plaintiff’s list of alleged protected activities); Ex. 3
18 (Sandhu Dep.) at 320:14-20 (“Q. Did you ever tell Dick Lynch that John Giamatteo had made an
19 advance at you? A. I didn’t get the opportunity to”). Plaintiff herself did not make Mr. Lynch
20 aware of any complaints until November 16—several days after he decided to separate her and two
21 other executives. Ex. 32 (BB13-00018204). Plaintiff has adduced no evidence to the contrary,
22 leaving an irreparable hole in her *prima facie* case. *See Cohen v. Fred Meyer, Inc.*, 686 F.2d 793,

23
24
25

² Summary judgment for BlackBerry is likewise appropriate on Plaintiff’s claims under California
26 Labor Code section 1102.5, because, for the same reasons discussed *infra* pp. 11-21, Plaintiff cannot
27 “demonstrate[] by a preponderance of the evidence” that protected activity was a “contributing
28 factor” to an adverse employment decision. *Lawson v. PPG Architectural Finishes, Inc.*, 503 P.3d
659, 663 (Cal. 2022); *see also Patten v. Grant Joint Union High Sch. Dist.*, 134 Cal. App. 4th 1378,
1386 (2005), *disapproved of on other grounds by Lawson*, 503 P.3d at 659 (FEHA standard for
“adverse employment action” applies to Labor Code § 1102.5 claims).

1 797 (9th Cir. 1982) (“An employer who has decided upon a new policy is not guilty of unlawful
2 retaliation simply because it proceeds with the implementation of that policy after learning that one
3 of the employees who will be affected thereby has recently engaged in a protected activity.”).

4 Plaintiff believes that Mr. Giamatteo was involved in her termination, but her belief is not
5 supported by any evidence. To the contrary, the undisputed evidence shows that Mr. Lynch acted
6 alone and without input from Mr. Giamatteo. Ex. 20 (Lynch Dep.) at 92:15-93:2; *see also* Ex. 31
7 (Kurtz Dep.) at 62:5-65:25, 183:8-185:16; Ex. 30 (Giamatteo Dep.) at 95:3-6; 256:3-25. Plaintiff's
8 unsupported belief does not suffice to avoid summary judgment. *See McRae v. Dep't of Corr.*, 142
9 Cal. App. 4th 377, 391 (2006) (rejecting plaintiff's unsupported belief that various acts by different
10 decisionmakers were part of a single campaign of retaliation); *In re Oracle Corp. Sec. Litig.*, 627
11 F.3d 376, 385 (9th Cir. 2010) (speculative, self-serving narrative cannot create question of fact under
12 Rule 56); *Alhozbur v. McHugh*, 2011 WL 13243131, at *8 (N.D. Cal. July 21, 2011) ("To meet her
13 burden, Plaintiff must come forward with admissible evidence.").

(b) Transfer of Accounts

15 Plaintiff also alleges that Mr. Chen retaliated against her when he decided to shift certain
16 customers from Ms. Sandhu’s sales team to Mr. Giamatteo’s sales team midway through 2023.
17 Plaintiff cannot make a *prima facie* case for this theory, for two independent reasons.

18 First, the account transfer was not an adverse employment action. Changes to an employee’s
19 responsibilities qualify as adverse in the retaliation context only where they are “reasonably likely
20 to impair [plaintiff’s] job performance or prospects for advancement.” *Yanowitz*, 116 P.3d at 1139;
21 *see also Xu v. LightSmyth Techs. Inc.*, 2024 WL 4562748, *2 (9th Cir. Oct. 24, 2024) (in the
22 retaliation context, adverse employment actions must be “serious enough to ‘dissuade[]’ a
23 reasonable worker from making or supporting a charge” of improper conduct); *Light v. Dep’t of*
24 *Parks & Recreation*, 14 Cal. App. 5th 75, 92 (2017) (“A change that is merely contrary to the
25 employee’s interests or not to the employee’s liking is insufficient.”). The undisputed evidence
26 shows that Mr. Chen promoted Ms. Sandhu to CMO at the same time he transferred the accounts.
27 *See Ex. 1 (Chen Dep.) at 107:8-24, 172:2-174:4; see also Ex. 38 (BB13-00011767); Ex. 12 (BB13-*
28 *00012834).* Ms. Sandhu concedes that these changes were a package, and the CMO role a

1 promotion. *See* FAC ¶ 18; Ex. 3 (Sandhu Dep.) at 54:3-16, 250:3-251:16 (testifying that promotion
2 was negotiated in connection with the account transfer). The change therefore did not “impair [her]
3 job performance or prospects for advancement.” *Yanowitz*, 116 P.3d at 1139. To the contrary, Mr.
4 Chen promoted Plaintiff to advance her career. Ex. 1 (Chen Dep.) at 173:16-174:4 (promotion was
5 “to give more to Neelam to further her role and career.”).

6 *Second*, Plaintiff cannot show a protected activity with any causal link to the account
7 transfer. Much of the activity that Ms. Sandhu identifies as protected—the transmission of an org
8 chart with an error in July 2022, and her alleged complaint to Mr. Chen in 2021—occurred long
9 before the transfer and is too remote in time to support an inference of causation. *See Anderson v.*
10 *City & Cnty. of San Francisco*, 169 F. Supp. 3d 995, 1028 (N.D. Cal. 2016) (seven months too long
11 to support inference of retaliatory motive) (citing cases); *cf. Day*, 930 F. Supp. 2d at 1181 (“[T]he
12 Ninth Circuit has held that gaps of one to three months” support an inference).

13 The only other activity prior to the account transfer that Ms. Sandhu identifies is her
14 February 2023 complaint about Mr. Giamatteo, Ex. 9 (Second Amended Resps. to Interrogatories,
15 Set 1)—but that complaint is not protected activity. To constitute protected activity, a complaint
16 must put an employer on notice of conduct FEHA prohibits. *See Yanowitz*, 116 P.3d at 1133. As
17 the California Supreme Court has explained, “complaints about personal grievances or vague or
18 conclusory remarks that fail to put an employer on notice as to what conduct it should investigate
19 will not suffice to establish protected conduct.” *Id.*; *see also Husman v. Toyota Motor Credit Corp.*,
20 12 Cal. App. 5th 1168, 1193-94 (2017) (complaints are not protected unless they convey that the
21 plaintiff believes the employer is acting in a discriminatory or unlawful manner); *Derr v. Encore*
22 *Grp. USA LLC*, 2023 WL 4768721, *3 (C.D. Cal. Jan. 5, 2023) (same). Plaintiff’s complaint in
23 February 2023 did not suggest harassment, discrimination, or any other conduct prohibited by
24 FEHA. *See supra* pp. 4-5. To the contrary, it appeared to focus only on *professional* grievances,
25 including concerns about information-sharing on client accounts and exclusion from client-facing
26 communications. Ex. 8 (BB13-00004373); Ex. 10 (BB13-00019395). Because the complaint
27 “relate[d] more to personal grievances in the workplace rather than to unlawful discriminatory
28 behavior,” it is not protected activity. *Swirski v. Protec Bldg. Servs., Inc.*, 2021 WL 5771222, at *9

³ (S.D. Cal. Dec. 6, 2021).

(c) Alleged Conduct by Mr. Giamatteo

Plaintiff's allegation that Mr. Giamatteo engaged in a years-long retaliation campaign against her also fails at the *prima facie* stage, for two independent reasons.

First, Mr. Giamatteo’s alleged conduct is not an adverse employment action as a matter of law. As noted, to qualify as adverse, an action must be “reasonably likely to impair a reasonable employee’s job performance or prospects for advancement or promotion.” *Yanowitz*, 116 P.3d at 1139. “[A] pattern of social slights by either the employer or co-employees cannot properly be viewed as affecting the terms, conditions, or privileges of employment,” under FEHA. *Id.* at 1138.

The alleged conduct by Mr. Giamatteo—whom Ms. Sandhu concedes was a fellow executive and never her supervisor, *see* Ex. 3 (Sandhu Dep.) at 22:3-12—amounts to (at most) such minor slights. Ms. Sandhu claims Mr. Giamatteo: (1) excluded her from meetings; (2) once took credit for her work; (3) organized his own press for a deal he worked on, despite Ms. Sandhu’s role as CMO; (4) circulated an incorrect org chart; (5) did not appropriately “acknowledge” her role; and (6) told others he was working on getting her out of the company. *See* Ex. 8 (BB13-00004373); Ex. 32 (BB13-00018204); FAC ¶¶ 45-57; Ex. 3 (Sandhu Dep.) at 218:17-221:7. BlackBerry disagrees with those claims—but even taking them as true, the conduct Ms. Sandhu alleges constitutes merely “minor or relatively trivial adverse actions” that are “not actionable,” even if they “anger[ed] or upset” Ms. Sandhu—particularly because Mr. Giamatteo was only her peer. *See Bailey v. San Francisco Dist. Atty’s Office*, 552 P.3d 433, 450 (Cal. 2024) (citation omitted).

Indeed, courts have determined that far worse conduct by non-supervisory employees does not rise to the level of an adverse employment outcome. In *Bishop v. Garland*, for example, coworkers widely and repeatedly circulated an email that harshly criticized an employee and her work performance. 2023 WL 3719747, at *2-3 (9th Cir. May 30, 2023). The employee alleged that

³ For the same reasons, Plaintiff's complaints are not protected under Labor Code § 1102.5, which requires a reasonable belief that "the disclosed activity [] violates [a] federal or state statute, rule, or regulation," *Love v. Motion Indus., Inc.*, 309 F. Supp. 2d 1128, 1134 (N.D. Cal. 2004), and excludes complaints primarily about routine personnel matters, *see Mueller v. Cnty. of Los Angeles*, 176 Cal. App. 4th 809, 822 (2009) ("To exalt these exclusively internal personnel disclosures with whistleblower status would create all sorts of mischief.").

1 the email “tarnish[ed] her reputation,” “humiliated her,” and caused her peers to “ignore[] her and
2 avoid[] her” and lose trust in her as a leader. *Id.* at *2, 4. Although the email “ignored basic
3 principles of tact and civility,” the panel nevertheless held that the plaintiff’s “claimed
4 consequences” did not constitute an adverse employment action. *Id.* at *3-4. “[C]hilly treatment
5 from coworkers is not an adverse employment action,” even where an employee finds it isolating or
6 humiliating. *Id.* at *2 (citing *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998)). Other
7 courts have similarly held that such conduct does not amount to an adverse employment action. *See,*
8 *e.g.*, *Manatt v. Bank of Am., NA*, 339 F.3d 792, 803 (9th Cir. 2003) (no adverse employment action
9 where immediate supervisor “stared at [plaintiff] in an angry way and allowed [her] co-workers to
10 be mean to her.”). As in *Bishop*, Plaintiff asserts *social* slights from *peers*—that she was avoided
11 professionally, not given due deference, or criticized.⁴ None of that changed the terms or conditions
12 of her employment.

13 *Second*, Plaintiff has articulated no protected activity with a causal connection to the conduct
14 of which she complains. Ms. Sandhu claims that Mr. Giamatteo began retaliating against her
15 “immediately” after two alleged protected activities in October 2021: (1) rejecting an alleged sexual
16 advance; and (2) reporting that advance to Mr. Chen 24 to 48 hours later. *See* FAC ¶ 46; Ex. 3
17 (Sandhu Dep.) at 243:6-8; 114:21-116:16. Neither activity can provide the basis for a *prima facie*
18 case. Rebuffing an advance is *not* a protected activity under FEHA. *See Cloud v. Brennan*, 436 F.
19 Supp. 3d 1290, 1300 (“[Plaintiff] cannot state a retaliation claim based on her refusing her
20 supervisors’ sexual advances.”); *Alhozbur*, 2011 WL 13243131, at *8 (same); *Monaghan v. El*
21 *Dorado Cty. Water Agency*, 2011 WL 4738356, at *7 (E.D. Cal. Oct. 5, 2011) (same). And Ms.
22 Sandhu’s claimed report to Mr. Chen cannot support a retaliation theory because there is no evidence
23 that Mr. Giamatteo was aware of it. To establish “a causal link” between protected activity and
24 retaliatory conduct, an employee must show that the relevant decisionmaker “was aware that the
25 plaintiff had engaged in the protected activity.” *Garcia-Brower*, 55 Cal. App. 5th at 978.

26 _____
27 ⁴ Ms. Sandhu’s allegation that Mr. Giamatteo told others he was “working on removing [her],” Ex.
28 8 (BB13-00004373), is inadmissible hearsay that cannot support Ms. Sandhu’s claims. *See, e.g.*,
Perata v. City & Cnty. of San Francisco, 2023 WL 4537695, at *16 (N.D. Cal. July 13, 2023)
(refusing to consider hearsay evidence of claimed retaliatory conduct).

1 Thus, the first potentially protected activity of which Mr. Giamatteo was aware was
2 Plaintiff's report regarding the incorrect org chart in July 2022—a report made well after Mr.
3 Giamatteo's allegedly retaliatory conduct began. For example, Plaintiff alleges that Mr. Giamatteo
4 began excluding her from meetings in January 2022. *See* Ex. 3 (Sandhu Dep.) at 219:4-12. And
5 the org chart incident itself obviously occurred before Plaintiff reported it to HR, so it cannot be tied
6 to *any* alleged protected activity and is irrelevant to Plaintiff's claims. *See Kourounian v. Calif.*
7 *Dep't of Tax & Fee Admin.*, 91 Cal. App. 5th 1100, 1113 (2023), *review denied* (Aug. 30, 2023)
8 (excluding conduct before an employer was aware of protected activity because “[a]s a matter of
9 both logic and law, acts of retaliation must occur after the protected activity.”).

10 **(d) *Alleged Conduct from the So-Called “Boys Club”***

11 Plaintiff's barebones claims about retaliation by a “boys club” also fail at the *prima facie*
12 stage. *First*, although Plaintiff's complaint alleges that a “boys club” mistreated her “[o]n a daily
13 or near daily basis,” FAC ¶ 35-36, Plaintiff has developed no evidence of retaliatory conduct by
14 such a group. That lack of evidence is fatal to her claims. *See In re Oracle*, 627 F.3d at 385
15 (speculative, self-serving narrative cannot create question of fact under Rule 56). *Second*, the
16 alleged slights from Plaintiff's peers—i.e., employees other than her supervisor who did not control
17 the terms of her employment—are not an adverse employment action. *See, e.g.*, *Yanowitz*, 116 P.3d
18 at 1139 (adverse employment actions must “materially affect[] the terms, conditions, or privileges
19 of employment.”); *Burlington*, 524 U.S. at 761 (chilly, isolating hostility from coworkers is not an
20 adverse action). *Finally*, Plaintiff cannot show the requisite causal link, because there is no evidence
21 that any member of the so-called “boys club” was aware of any protected activity. *Ahmed v.*
22 *Wormuth*, 2024 WL 5077606, at *9 (N.D. Cal. Dec. 10. 2024) (causation requires awareness).

23 **2. BlackBerry Has Legitimate Reasons for Each Claimed Adverse Action.**

24 Because Plaintiff has not met her burden of establishing a *prima facie* case as to any of her
25 retaliation theories, her claim fails at the starting line. Regardless, BlackBerry has stated a legitimate
26 reason for each act Plaintiff challenges as retaliatory, satisfying its burden at the second step and
27 shifting the burden back to Plaintiff to show intentional retaliation. *See Yanowitz*, 116 P.3d at 1130.

28 **(a) *Termination***

1 Plaintiff was terminated for a non-retaliatory reason: Her roles were eliminated as part of a
2 large-scale restructuring. That plan was public and targeted for elimination jobs that performed
3 corporate functions or resided outside the company's two business units. *See* Ex. 17 (BB13-
4 00022508); Ex. 39 (BB13-00022505). It is undisputed that Plaintiff reported directly to
5 BlackBerry's CEO for each of her roles, outside the structure of BlackBerry's two business units.
6 *See* Ex. 20 (Lynch Dep.) at 70:21-80:22, FAC ¶ 20. Corporate downsizing based on objective
7 criteria, as here, is a legitimate basis for termination. *See Guz*, 8 P.3d at 1115 (corporate downsizing
8 is a legitimate rationale where no evidence shows discriminatory motive drove employee selection);
9 *Fu v. Walker Parking Consultants*, 796 F. Supp. 2d 1148, 1156 (N.D. Cal. 2011) (same); *Schechner*
10 *v. KPIX-TV*, 686 F.3d 1018, 1025 (9th Cir. 2012) (same). After deciding to eliminate Plaintiff's
11 roles based on BlackBerry's restructuring goals, the company was not required to find Plaintiff an
12 alternative role. It declined to do so for two non-retaliatory reasons: Plaintiff had demonstrated an
13 inability to get along with coworkers, *see* Ex. 20 (Lynch Dep.) at 79:2-92:9, and Mr. Lynch believed
14 reducing executive roles was essential to BlackBerry's cost-cutting goals, *id.* at 79:2-17.

(b) Account Transfer

16 Mr. Chen’s decision to re-allocate accounts in the second quarter of 2023 was likewise based
17 on a legitimate purpose. The transfer attempted to address long-term friction between the Elite and
18 Cyber teams—a phenomenon that predated Mr. Giamatteo—by giving each exclusive control over
19 a subset of customers. *See* Ex. 1 (Chen Dep.) at 107:8-24; Ex. 40 (BB13-00012142). Transfers to
20 address organizational conflict are legitimate management decisions. *See* *McRae*, 142 Cal. App.
21 4th at 393 (transfer geared to address friction was a “reasonable management decision.”).

(c) *Treatment by Mr. Giamatteo and the So-Called "Boys Club"*

The record reveals two non-retaliatory reasons for friction between Ms. Sandhu, on the one hand, and Mr. Giamatteo and Plaintiff's other coworkers, on the other. *First*, as Ms. Sandhu has conceded, Elite and Cyber had overlapping responsibilities and thus a natural reason for conflict. *Second*, several of Ms. Sandhu's colleagues reported that they found it difficult to work with her. BlackBerry's outside counsel indicated as much when evaluating tensions between the Elite and Cyber teams. *See infra* pp. 4-5. Other coworkers observed the same: Marjorie

1 Dickman, a former C-Suite executive at BlackBerry, testified that Ms. Sandhu was “hostile,
2 untrustworthy,” and “created “unnecessary conflict and friction” every time she and Dickman
3 interacted. *See* Ex 42 (Dickman Dep.) at 149:19-154:2.

4 **3. Plaintiff Cannot Show Pretext or Improper Intent.**

5 Even if Ms. Sandhu’s claim did not fail at the *prima facie* stage, summary judgment is proper
6 because she cannot show “intentional retaliation.” *Yanowitz*, 116 P.3d at 1130. Because BlackBerry
7 has articulated legitimate reasons for the challenged conduct, the burden shifts to Plaintiff to show
8 intentional retaliation either by offering evidence of retaliatory intent or by showing BlackBerry’s
9 rationale is pretextual. *Id.* If Plaintiff relies on circumstantial evidence of retaliatory intent, that
10 evidence must be “specific and substantial.” *Morgan*, 88 Cal. App. 4th at 69. To show pretext,
11 Plaintiff must prove, by “specific and substantial supporting evidence,” that there are “weaknesses,
12 implausibilities, inconsistencies, or contradictions in the employer’s proffered legitimate reasons for
13 its actions [such] that a reasonable factfinder could rationally find them ‘unworthy of credence.’”
14 *Tandon v. GN Audio USA, Inc.*, 2022 WL 1210945, at *1 (9th Cir. Apr. 25, 2022) (citing cases).
15 For the reasons stated below, Plaintiff cannot meet that burden as to any theory.

16 **(a) Termination**

17 Plaintiff cannot show that retaliatory intent motivated her termination or that BlackBerry’s
18 proffered reasons for that termination are pretextual. To begin, Mr. Lynch testified that Ms.
19 Sandhu’s termination was not based on retaliatory motive, Ex. 20 (Lynch Dep.) at 260:13-22, and
20 Plaintiff has adduced no evidence to the contrary. Indeed, Mr. Lynch was not aware of any protected
21 activity when he decided to terminate her. *See supra* pp. 11-12.

22 Lacking affirmative evidence of retaliatory intent, Plaintiff appears instead to rely on (1) Mr.
23 Lynch’s speculation that Ms. Sandhu may have submitted the anonymous complaint accusing Mr.
24 Giamatteo of sexual harassment, Ex. 20 (Lynch Dep.) at 105:10-106:12; and (2) the short interval
25 between her participation in the investigation and her termination. Neither is sufficient to show—
26 as Plaintiff must to survive summary judgment—that BlackBerry’s stated rationale was pretext or
27 that retaliatory intent was a “substantial motivating factor” behind the termination. *Alamo v. Prac.*
28 *Mgmt. Info. Corp.*, 219 Cal. App. 4th 466, 479 (2013); *see also Morgan*, 88 Cal. App. 4th at 76 (to

survive summary judgment, a plaintiff “must do more than establish a prima facie case and deny the credibility of the defendant’s witnesses.”). The speculation about Ms. Sandhu’s involvement in the complaint fails because even *actual knowledge* of protected activity is insufficient to show retaliatory intent. *See, e.g., Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 892 (9th Cir. 1994), *as amended on denial of reh’g* (July 14, 1994) (granting summary judgment because, although plaintiff had shown employer was aware of protected conduct, he had not offered any specific evidence of pretext or retaliatory intent). Were the law otherwise, *any* employee who feared termination could create a successful retaliation claim simply by making a complaint and making sure the company was aware of it. *Cf. Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000) (noting courts’ concern that “employers will be paralyzed into inaction once an employee has lodged a complaint under Title VII, making such a complaint tantamount to a ‘get out of jail free’ card for employees engaged in job misconduct”); *Arteaga v. Brink’s Inc.*, 163 Cal. App. 4th 327, 354 (2008) (“Precedent does not prevent [an employer] from removing an employee simply because the employee [recently] engaged in a protective activity.”). Similarly, courts have held that a plaintiff cannot satisfy her third-step burden merely by pointing to temporal proximity of protected activity and an adverse action. *See Rodriguez*, 2020 WL 4368213 at *7; *Arteaga*, 163 Cal. App. 4th at 354.

Nor has Plaintiff identified “weaknesses, implausibilities, inconsistencies, or contradictions” in BlackBerry’s rationale for her termination. *Tandon*, 2022 WL 1210945, at *1. The parties agree that BlackBerry told Ms. Sandhu her termination was due to restructuring. *See Ex. 3 (Sandhu Dep.) Tr. 271:6-19.* And the undisputed evidence shows that BlackBerry eliminated Ms. Sandhu’s roles, along with hundreds of other jobs. *See Bramhill Decl. ¶ 9-12* (BlackBerry has not had a CMO, Chief Elite Customer Success Officer, or executive outside legal in charge of sustainability functions since Ms. Sandhu departed); Ex. 43 (BB13-00022363); Ex. 30 (Giamatteo Dep.) at 260:15-261:9.

(b) Account Transfer

Plaintiff likewise cannot meet her burden to show—by “specific and substantial” evidence—that discriminatory intent drove Mr. Chen’s decision to reallocate accounts in 2023, for two reasons. *Morgan*, 88 Cal. App. 4th at 69. *First*, the uncontested evidence shows that Ms. Sandhu was promoted at the same time by Mr. Chen, the same decisionmaker. *See supra* p. 12-13. That is

1 “strong evidence” that no improper motive drove the transfer. *See Coghlan v. American Seafoods*
2 Co. LLC

3 , 413 F.3d 1090, 1096 (9th Cir. 2005); *cf. Day*, 930 F. Supp. 2d at 1161 (in the
4 discrimination context, if “the same actor is responsible for both the hiring and firing . . . and both
5 actions occur within a short period of time, a strong inference arises that there was no [improper]
6 motive.”). *Second*, no evidence suggests that Mr. Chen’s rationale was pretextual. *Cf. Ex. 1 (Chen*
7 *Dep.) at 172:22-173:15 (move was not retaliatory or based on gender).* To the contrary, it is
8 *undisputed that the tensions the transfer sought to address existed and were structural:* Plaintiff
9 *herself complained about the tensions in February 2023, Ex. 8 (BB13-00004373), and concedes that*
9 *frictions stemmed partly from the teams’ overlapping roles.* Ex. 3 (Sandhu Dep.) at 98:1-18.

(c) Treatment by Mr. Giamatteo and the “Boys Club”

Finally, Ms. Sandhu cannot meet her burden to show—by “specific and substantial” evidence—that any of her coworkers were motivated by retaliatory intent. Plaintiff has alleged, at most, that coworkers sought to avoid her and undermine her professionally—but no evidence suggests that their conduct was motivated by retaliatory intent for something Ms. Sandhu did or said. Indeed, no evidence suggests that any member of the alleged “boys club” was even *aware* of protected activity. *See supra* pp. 16. Nor was Mr. Giamatteo aware of any protected activity before July 2022—almost a year after Ms. Sandhu alleges retaliation from him began. *See supra* pp. 15-16. Plaintiff therefore has not met her burden to show “specific and substantial evidence” that the treatment she allegedly experienced from her peers was motivated by retaliatory intent, rather than normal, professional dislike. *See Arnold v. Dignity Health*, 53 Cal. App. 5th 412, 430 (2020) (to survive summary judgment, Plaintiff must show “a rational inference that discrimination . . . was the true reason” for complained-of actions).

(d) No Cat's Paw Theory Is Available

Finally, Plaintiff cannot rely on a “cat’s paw” theory of intent—i.e., attempting to show that other employees’ alleged bias influenced Mr. Lynch’s or Mr. Chen’s actions. That theory applies only where a plaintiff’s *supervisor* influences the ultimate decisionmaker. *See Miller v. T-Mobile U.S.A. Inc.*, 2025 WL 3085722, at *10 (N.D. Cal. Nov. 5, 2025). As a court in this district recently explained, “[e]very Ninth Circuit case this Court has found [applying a cat’s paw theory] involved

1 the bias of a subordinate supervisor, *i.e.*, a person who was subordinate to the final decisionmaker,
2 but who acted *in a supervisory capacity over the plaintiff*.” *Id.* (emphasis added); *see also id.* (noting
3 that California courts “do not yet appear to have addressed” the theory as applied to a “coworker’s
4 biased conduct either” and citing *Reeves v. Safeway Stores, Inc.*, 121 Cal. App. 4th 95, 109 n.9
5 (2004), as “expressly cabining its analysis of cat’s paw liability to supervisors”).

6 It is undisputed that Plaintiff reported directly to BlackBerry’s CEO at all times relevant to
7 this suit. *See Ex. 3* (Sandhu Dep.) at 146:17-147:7. As Ms. Sandhu acknowledged, Mr. Giamatteo
8 was never her supervisor, *id.* at 22:3-12, and Ms. Sandhu, as she wrote in 2023, did not “consider
9 him to have any authority over [her] role.” *Ex. 8* (BB13-00004373). Nor did any other employee
10 in the so-called “boys club” oversee Ms. Sandhu or her work. *See Bramhill Decl.* ¶ 6.

11 **B. Plaintiff’s Discrimination Claim Fails as a Matter of Law.**

12 Plaintiff’s discrimination claim (premised on the same allegations as her retaliation claims)
13 fails because she cannot show her gender was a “substantial motivating factor” behind BlackBerry’s
14 actions on any theory. *See Harris v. City of Santa Monica*, 294 P.3d 49, 66 (Cal. 2013).

15 **1. Termination**

16 BlackBerry has articulated a legitimate rationale for Plaintiff’s termination that has nothing
17 to do with her gender. *See supra* pp. 17. “[T]he presumption of discrimination” thus “disappears,”
18 *Guz*, 8 P.3d at 1114, and Plaintiff must show that an illegitimate criterion was “a substantial
19 motivating factor” in her firing, *Harris*, 56 Cal. 4th at 232 (emphasis added).

20 Plaintiff cannot meet that burden. Plaintiff has *no* evidence that Mr. Lynch was motivated
21 by an improper purpose. *See supra* pp. 18-19. Nor can she rely on circumstantial evidence of bias:
22 Although she has sought discovery on *other* women’s experiences, that evidence is insufficient to
23 show intent, including because none of it bears on Mr. Lynch—the decisionmaker in Ms. Sandhu’s
24 firing. *See infra* pp. 23. Finally, Plaintiff cannot show intent based on a cat’s paw theory, *see supra*
25 pp. 20-21, even if such evidence existed.

26 Ms. Sandhu also cannot show that BlackBerry’s stated rationale for her termination is an
27 attempt to mask intentional discrimination. To the contrary, the undisputed evidence shows that her
28 termination was part of a broader restructuring, which eliminated her roles along with many others.

1 See *supra* pp. 19. Ms. Sandhu has no evidence suggesting her gender was an actual motivating
2 cause (much less a substantial one) for her termination.

3 **2. Transfer of Accounts**

4 As for the transfer of accounts, Plaintiff cannot meet even her *prima facie* burden because
5 the transfer is not an adverse employment action: The transfer, which was paired with a promotion
6 to CMO, did not leave her “worse off.” *Muldrow v. City of St. Louis, Mo.*, 144 S. Ct. 967, 977
7 (2024); *see supra* p. 12-13.

8 Although the inquiry can end there, BlackBerry has articulated a legitimate reason for the
9 account transfers. *See supra* pp. 17. To survive summary judgment, Plaintiff must thus show
10 “meaningful evidence that her supervisor harbored discriminatory animus,” *Day*, 930 F. Supp. 2d
11 at 1162 (citation omitted). She again cannot meet that burden. Plaintiff *conceded* that she does not
12 believe Mr. Chen was prejudiced against her because of her gender. *See* Ex. 3 (Sandhu Dep.) at
13 34:14-17 (“Q. Do you believe that John Chen was prejudiced against you because of your race or
14 gender? A. No.”). In any event, Mr. Chen’s decision to promote Ms. Sandhu to CMO, and his
15 record of giving her “promotion after promotion,” FAC ¶¶ 16, 30, are “strong evidence” that no
16 discrimination was at play. *See Coglan*, 413 F.3d at 1096.

17 **3. Treatment by Mr. Giamatteo and the “Boys Club”**

18 The treatment Ms. Sandhu claims she experienced from Mr. Giamatteo and the unspecified
19 “boys club” cannot support a *prima facie* discrimination claim for the same reasons that Plaintiff’s
20 retaliation claim fails: The conduct Plaintiff has *alleged* would not amount to an adverse
21 employment action as a matter of law, and Plaintiff has failed to develop evidence of most of that
22 alleged conduct. *See supra* pp. 16. In any case, Ms. Sandhu cannot offer “meaningful evidence”
23 that conflict with her peers was motivated by intentional discrimination, *Day*, 930 F. Supp. 2d at
24 1162, as she must to survive summary judgment given that BlackBerry has articulated a non-
25 discriminatory reason for that tension, *see supra*, pp. 18.

26 **C. Plaintiff’s Evidence Regarding Other Women Does Not Show Intent.**

27 Without affirmative evidence that improper intent actually motivated any of the conduct she
28 challenges, Plaintiff has focused her discovery on anecdotes from women who worked in different

1 departments and had different supervisors than Plaintiff. But even crediting that disputed evidence
2 as fact, it is insufficient as a matter of law to carry Plaintiff's claims for two reasons.

3 First, Plaintiff relies on anecdotes that, even if proven, would be insufficient to show a
4 pattern of retaliatory or discriminatory intent. Plaintiffs relying on a pattern of discrimination to
5 indicate intent must present statistical samples sufficient to show a "stark pattern of discrimination
6 unexplainable on grounds other than" gender. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1283
7 (9th Cir. 2000). Accounts from a handful of employees are insufficient. *See, e.g., Sengupta v.*
8 *Morrison-Knudsen Co., Inc.*, 804 F.2d 1072, 1076 (9th Cir. 1986) (declining to consider evidence
9 that four of the five employees laid off in a pool of 28 employees were African American because
10 "statistical evidence derived from an extremely small universe . . . has little predictive value and
11 must be disregarded"); *Aragon v. Republic Silver State Disposal Inc.*, 292 F.3d 654, 663 (9th Cir.
12 2002) (refusing to "give . . . much weight" to evidence that "three of the four" employees "singled
13 out for [a] lay off" were of the same race, because "the sample size is so small"). The same high
14 standard applies to retaliation claims: Courts require statistical evidence showing a "stark pattern
15 of retaliation." *Day*, 930 F. Supp. 2d at 1185. Courts have repeatedly held that a handful of
16 examples are insufficient to demonstrate a "stark pattern," particularly in the context of a large
17 company like BlackBerry. *See id.* (citing cases).

18 Lacking statistical evidence, Ms. Sandhu appears poised to rely on precisely the sort of
19 anecdotes—depositions of just five former employees across four departments—that courts have
20 held insufficient to demonstrate a pattern of improper intent. Even if each former employee had
21 offered evidence of discrimination or retaliation (they did not), the experience of five people in a
22 large multinational company could not indicate the "stark pattern" courts require. *See Sengupta*,
23 804 F.2d at 1076; *Day*, 930 F. Supp. 2d at 1186 (sample of four insufficient).

24 Second, Plaintiff's evidence from other women also fails to show improper intent because
25 those women's experiences do not bear on the decisionmakers relevant to Plaintiff's termination
26 and the transfer of accounts. None of the women from whom Ms. Sandhu sought testimony offered
27 any evidence of discriminatory or retaliatory conduct from Mr. Lynch or Mr. Chen. *See Ex. 42*
28 (Dickman Dep.) at 45:19-46:7; Ex. 44 (McMillan Dep.) at 36:24-25; Ex. 45 (Ransom Dep.) at 19:15-

1 17; Ex. 46 (Slimmon Dep.) at 35:15-16; Ex. 47 (Tatsis Dep.) at 79:21-80:10. Anecdotes from those
2 women are thus irrelevant to Plaintiff's theories based on her termination or the transfer of accounts.
3 See *Day*, 930 F.Supp.2d at 1184 (evidence suggesting improper intent was irrelevant because it did
4 not concern the decisionmakers involved in termination); *see also id.* (citing cases); *Machado v.*
5 *Johnson*, 191 Fed. App'x 531, 533 (9th. Cir. 2006) (refusing to consider evidence related to
6 allegedly discriminatory conduct by actor “not linked to the decision to fire [plaintiff]”).

7 **D. Plaintiff's Derivative Claims Fail.**

8 Plaintiff's failure to prevent and wrongful termination claims are derivative of her FEHA
9 claims. Because Plaintiff has failed to demonstrate a triable issue on her FEHA claims, her
10 derivative claims fail as well. See *Van Osten v. Home Depot, U.S.A, Inc.*, 2021 WL 3913483, at
11 *11 (S.D. Cal. Aug. 27, 2001) (“A claim for failure to prevent discrimination or retaliation requires
12 discrimination or retaliation to have occurred in the first place.”); *Merrick*, 867 F.3d at 1150
13 (dismissing wrongful termination claim where Plaintiff failed to raise triable issue as to FEHA
14 claims); *Tandon*, 2022 WL 1210945, at *2 (same).

15 **E. Plaintiff Cannot Establish Negligent Retention.**

16 Plaintiff likewise cannot show BlackBerry was negligent in hiring or maintaining Mr.
17 Giamatteo as an employee of the company. Liability for negligent hiring “is based upon the facts
18 that the employer knew or should have known that hiring the employee created a particular risk or
19 hazard and that particular harm materializes.” *Quigley v. United Airlines, Inc.*, 2021 WL 1176687,
20 at *10 (N.D. Cal. Mar. 29, 2021) (quoting *Doe v. Cap. Cities*, 50 Cal. App. 4th 1038, 1054 (1996)).
21 “To establish negligent supervision, a plaintiff must show that a person in a supervisorial position
22 over the actor had *prior* knowledge of the actor’s propensity to do the bad act.” *Alexander v. Cnty.*
23 *Hosp. of Long Beach*, 46 Cal. App. 5th 238, 264 (2020) (quoting *Z.V. v. County of Riverside*, 238
24 Cal. App. 4th 889, 902 (2015)). Plaintiff has no evidence that BlackBerry was on notice of any
25 alleged impermissible conduct by Mr. Giamatteo. To the contrary, investigations at the company
26 concluded Mr. Giamatteo had not engaged in any improper conduct at all.

27 **F. Punitive Damages Are Unavailable as a Matter of Law.**

28 Punitive damages likewise are not available to Plaintiff, because she has not shown, or even

1 alleged conduct sufficient to show, that BlackBerry acted with “malice, oppression, or fraud.”
2 *Rodriguez*, 2020 WL 4368213 (quoting Cal. Civ. Code § 3294(a)).

3 Punitive damages are an extreme remedy that requires “clear and convincing evidence” that
4 an officer of the company acted with “malice, oppression, or fraud.” *Rodriguez*, 2020 WL 4368213,
5 at *8 (quoting Cal. Civ. Code § 3294(a)); *Van Osten*, 2021 WL 3913483, at *9. This remedy
6 requires conduct “so vile, base, contemptible, miserable, wretched or loathsome that it would be
7 looked down upon and despised by ordinary decent people.” *Am. Airlines, Inc. v. Sheppard, Mullin,*
8 *Richter & Hampton*, 96 Cal. App. 4th 1017, 1050-51 (2002). “Such conduct has been described as
9 ‘[having] the character of outrage frequently associated with crime.’” *Id.* Even *intentional*
10 discrimination, without more, is generally insufficient to support punitive damages. *Talamantes v.*
11 *Costco Wholesale Corp.*, 2025 WL 1785766, at *8 (N.D. Cal. June 27, 2025).

12 Plaintiff has not adduced evidence—or, indeed, even *alleged* conduct—close to that
13 threshold. Courts have found far more egregious conduct insufficient to support punitive damages
14 at summary judgment. *Id.* at *8 (excluding punitive damages where plaintiff was allegedly “told
15 not to disclose his disabilities,” “laughed at for requesting a no heavy lifting accommodation for his
16 ankle,” “forced to lift a couch over his objection,” and “mocked for having childhood-related
17 PTSD”). The Court should strike Plaintiff’s request for punitive damages.

18 **V. CONCLUSION**

19 For the reasons set forth above, the Court should grant summary judgment against each of
20 Plaintiff’s claims in their entirety, as well as Plaintiff’s request for punitive damages.
21

22 DATED: December 10, 2025

MUNGER, TOLLES & OLSON LLP

24 By: _____ /s/ Katherine M. Forster
25 _____ KATHERINE M. FORSTER

26 Attorneys for Defendant BLACKBERRY
27 CORPORATION
28